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**IN THE
COURT OF APPEALS OF INDIANA**

EUGENE K. STEPHIC,
Appellant-Petitioner,

VS.

STATE OF INDIANA,
Appellee-Respondent.

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No. 20A03-0603-PC-139

APPEAL FROM THE ELKHART SUPERIOR COURT
The Honorable James W. Rieckhoff, Judge
Cause No. 20D05-0505-PC-2 and
20D05-0505-PC-3

November 9, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Eugene K. Stepthic appeals from the denial of his petition for post-conviction relief.

We affirm.

ISSUE

Whether the post-conviction court erred in denying Stepthic's petition for post-conviction relief.

FACTS

On May 18, 1996, the Indiana Bureau of Motor Vehicles ("BMV") suspended Stepthic's motor-vehicle license for a five-year period after determining him to be an habitual traffic violator ("HTV") pursuant to Indiana Code section 9-30-10-4(c). Stepthic received notice of the suspension.

Stepthic operated a motor vehicle on July 16, 1996. On September 18, 1996, Stepthic pled guilty to operating a motor vehicle while privileges were suspended, a class D felony. On October 21, 1996, the trial court entered a judgment of conviction and sentenced Stepthic. Pursuant to Indiana Code section 9-30-10-16, Stepthic's driving privileges were forfeited for life.

Stepthic again operated a motor vehicle on April 6, 1998. On October 12, 1998, Stepthic pled guilty to operating a motor vehicle while privileges were suspended, a class D felony. The trial court entered a judgment of conviction and sentenced Stepthic on February 8, 1999.

On January 26, 2005, Stepthic filed a petition for judicial review of the HTV determination. Stepthic argued that he did not have the requisite number of traffic-violation judgments under Indiana Code section 9-30-10-4(c), which provides as follows:

A person who has accumulated at least ten (10) judgments within a ten (10) year period for any traffic violation, except a parking or an equipment violation, of the type required to be reported to the bureau, singularly or in combination, not arising out of the same incident, and with at least one (1) violation occurring after March 31, 1984, is a habitual violator. However, at least one (1) of the judgments must be for a violation enumerated in subsection (a) or (b).

Stepthic asserted that the BMV “enumerated eleven (11) violations” but “erroneously listed two (2) offenses which occurred March 17, 1994 which led to a conviction on April 12, 1994.” (App. 9).

On March 7, 2005, the trial court entered its judgment and order on Stepthic’s petition for judicial review. Determining that Indiana Code section 9-30-10-4(c) requires a total of eleven judgments for traffic violations and that Stepthic only had ten, the trial court found that the BMV “made a material error in it’s [sic] determination that [Stepthic] was a habitual violator” and ordered the BMV “to expunge from their records said finding that [Stepthic] is a habitual violator, and rescind the five (5) year license suspension previously entered by the [BMV].” (App. 16).

On May 9, 2005, Stepthic filed petitions for post-conviction relief, seeking to set aside his October 21, 1996 and October 12, 1998 convictions for operating a motor vehicle while privileges were suspended. On October 26, 2005, the post-conviction court held a hearing on both petitions. On February 23, 2006, the post-conviction court entered its order, concluding:

A. Step hic had the burden to establish his grounds for post-conviction relief by a preponderance of the evidence.

B. The essence of an HTV offense is the act of driving after being so determined. The focus is not on the reliability or non-reliability of the underlying determination, but on the mere fact of the determination.

C. The fact that an offense underlying an HTV determination is later challenged or set aside does not mean that the HTV adjudication is invalid.

D. Indiana Code § 9-30-10-4, subsection c, requires only ten judgments including at least one of the type enumerated in subsection (a) or (b), rather than eleven as contended by Step hic.

E. Even after removal of an inappropriate judgment dated April 12, 1994, Step hic's driving record as of July 16, 1996 included the number and kind of judgments required by I.C. § 9-30-10-4, subsection c, and the BMV's determination that he was an HTV was then valid.

F. Step hic has failed to prove that he is entitled to post-conviction relief under case 20D05-0505-PC-3.

G. As a consequence of his sentencing on October 21, 1996 Step hic's driving privileges were forfeited for life.

H. On April 6, 1998, when Step hic again operated a motor vehicle, the lifetime forfeiture of his driving privileges was valid and in effect.

I. Step hic has failed to prove that he entitled to post-conviction relief under case 20D05-0505-PC-2.

(App. 30-13) (citations omitted).

DECISION

A post-conviction petitioner bears the burden of establishing his claims by a preponderance of the evidence. *Fisher v. State*, 810 N.E.2d 674, 679 (Ind. 2004); Ind. Post-Conviction Rule 1(5). When reviewing the denial of a petition for post-conviction relief, we will neither reweigh the evidence nor judge the credibility of the witness. *Id.*

Thus, to prevail on appeal from the denial of post-conviction relief, the petitioner must show that the evidence as a whole leads unerringly and unmistakably to a conclusion opposite to that reached by the post-conviction court. *Id.* We will reverse a post-conviction court's findings and judgment only upon a showing of clear error. *Id.* Thus, we must be left with a definite and firm conviction that the post-conviction court has made a mistake. *Id.* "[F]indings of fact are accepted unless clearly erroneous, but no deference is accorded conclusions of law." *Id.*

Stephic asserts he is entitled to post-conviction relief because the trial court found his license suspension was based on a material error. We disagree.

In *State v. Starks*, 816 N.E.2d 32, 35 (Ind. 2004), our Supreme Court held that if a person demonstrates to either the BMV or a review court that a "material error" resulted in an HTV determination, "the person is afforded the opportunity to pursue post-conviction relief" in the court where the person pled guilty to driving with a suspended license. "This is not to say however that relief automatically will be granted." *Id.* That is because "the essence of the HTV offense is the act of driving after having been so determined." *Id.* "Because the underlying offense is later challenged or set aside does not mean the HTV adjudication is invalid." *Id.*

Therefore, the "proper focus of our inquiry . . . is not whether the adjudication itself was valid," but rather whether the petitioner "was aware of his adjudication as an HTV at the time of his conviction, and whether his guilty plea was based on a factual basis *at that time.*" *Hoaks v. State*, 832 N.E.2d 1061, 1064 (Ind. Ct. App. 2005) (emphasis in original), *trans. denied*. A sufficient factual basis exists where a person

admits to driving a vehicle, knowing that his license has been suspended. *Id.* (citing *Starks*, 816 N.E.2d at 34).

In this case, Stephe received notice that the BMV had suspended his license for a period of five years. Aware that his license was suspended, Stephe twice drove a vehicle and pled guilty to the same without challenging the HTV determination. We cannot say the trial court erred in denying Stephe's petition for post-conviction relief.

Affirmed.

NAJAM, J., and FRIEDLANDER, J., concur.